

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JAMES FITZPATRICK,

Plaintiff,

vs.

No. CV 18-0730 RB/CG

BETTY JUDD, et al.,

Defendants.

**ORDER DENYING APPLICATION TO PROCEED UNDER 28 U.S.C. § 1915  
AND ORDER TO SHOW CAUSE**

THIS MATTER is before the Court *sua sponte*. Plaintiff, James Fitzpatrick, filed this civil rights proceeding under 42 U.S.C. § 1983 on July 30, 2018. (Doc. 1.) Plaintiff did not pay the \$400.00 filing fee or submit an application to proceed without prepayment of fees or costs pursuant to 28 U.S.C. § 1915. On August 23, 2018, the Court ordered Plaintiff to cure this deficiency within 30 days by either paying the \$400.00 filing fee or submitting an application to proceed *in forma pauperis*. (Doc. 4.) The Order advised Plaintiff that if he failed to cure the deficiency within the 30-day time period, the Court could dismiss this proceeding without further notice. (*Id.* at 1, 3.) The Court also sent Plaintiff the forms for submitting an application under § 1915. (*Id.* at 3.)

More than 30 days has elapsed since entry of the Court's Order to Cure Deficiency and Plaintiff has not paid the \$400 filing fee. Plaintiff did submit an Application to Proceed in District Court Without Prepaying Fees or Costs under § 1915. (Doc. 9.) However, Plaintiff did not include the six-month inmate account statement required by 28 U.S.C. § 1915(b) and the Court's August 23, 2018 Order. Instead, Plaintiff submitted a letter response to the Court's Order on August 31,

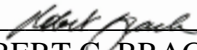
2018. (Doc. 8.) Plaintiff's response, which is not sworn under penalty of perjury, states that his request for an account statement was "denied." (Doc. 8.) The letter response contains no factual allegations or supporting documentation as to when his request for the account statement was submitted, who it was submitted to, or when, by whom, and how it was denied. The Court takes judicial notice that Plaintiff Fitzpatrick has been ordered and has failed to cure the same deficiency in two other pending civil rights cases, *Fitzpatrick v. Judd*, No. CV 18-0706 JC/GBW, and *Fitzpatrick v. Judd*, No. CV 18-0735 MV/KBM. An additional case, *Fitzpatrick v. New Mexico Department of Corrections*, No. CV 17-1042 KG/SMV, the case was dismissed without prejudice for failure to comply with an order to cure the identical deficiency. *See Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972) (the Court may take judicial notice of its own records).

Under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the filing fee from the Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Plaintiff has filed an Application to Proceed claiming he cannot pay the fee but has failed to submit the inmate account statement required under § 1915. Therefore, the Court will deny Plaintiff's Application to Proceed (Doc. 9) and order Plaintiff to show cause within 21 days of the date of entry of this Order why this proceeding should not be dismissed for failure to comply with the requirements of 28 U.S.C. §§ 1914 and 1915 and with the Court's August 23, 2018 Order to Cure Deficiency. If Plaintiff does not show cause within 21 days, the Court may dismiss this case without further notice.

**IT IS ORDERED:**

(1) the Application to Proceed in District Court Without Prepayment of Fees or Costs filed by Plaintiff James Fitzpatrick (Doc. 9) is **DENIED**; and

(2) Plaintiff, James Fitzpatrick is ordered to show cause, within 21 days of entry of this Order, why his Prisoner's Civil Rights Complaint should not be dismissed for failure to comply with 28 U.S.C. §§ 1914 and 1915 and with the Court's August 23, 2018 Order to Cure Deficiency.

  
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ROBERT C. BRACK  
SENIOR U.S. DISTRICT JUDGE